

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ORIGINAL
DEF
CIM

-----X
ALFREDA WASHINGTON,

Plaintiff,

-against-

COLUMBUS WASHBOARD COMPANY,
FLATBUSH HARDWARE
CORPORATION, PAUL NATION and
CHRISTOPHER NATION,

Defendants.
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MEMORANDUM AND ORDER

Case No. 10-CV-3244 (FB) (CLP)

Appearances:

For the Plaintiff:

CRYSTAL J. BURDEN, ESQ.
26 Court Street, Suite 2702
Brooklyn, NY 11242

For Defendant Columbus Washboard Co.:

JOSEPH E. DONAT, ESQ.
ARLENE E. LEWIS, ESQ.
SHARON SCHWEIDEL, ESQ.
Herzfeld & Rubin, P.C.
125 Broad Street
New York, NY 10004

*For Defendants Flatbush Hardware Corp.,
Paul Nation & Christopher Nation:*

NEIL SZNITKEN, ESQ.
Silberzweig & Sznitken, Esqs.
267 Flatbush Avenue
Brooklyn, NY 11217

BLOCK, Senior District Judge:

On December 20, 2010, Magistrate Judge Pollak issued a Report and Recommendation ("R&R") recommending that plaintiff's motion to withdraw her claims against the nondiverse defendants be granted. The R&R recited that "[a]ny objections to this Report and Recommendation must be filed with the Clerk of the Court . . . within fourteen (14) days of receipt," and that "[f]ailure to file objections within the specified time

waives the right to appeal the District Court's order." R&R at 3-4. To date, no objections have been filed.

If clear notice has been given of the consequences of failure to object, and there are no objections, the Court may adopt the R&R without *de novo* review. See *Thomas v. Arn*, 474 U.S. 140, 149-50 (1985); *Mario v. P & C Food Mkts., Inc.*, 313 F.3d 758, 766 (2d Cir. 2002) ("Where parties receive clear notice of the consequences, failure timely to object to a magistrate's report and recommendation operates as a waiver of further judicial review of the magistrate's decision."). The Court will excuse the failure to object, however, and conduct *de novo* review if it appears that the magistrate judge may have committed plain error. See *Spence v. Superintendent, Great Meadow Corr. Facility*, 219 F.3d 162, 174 (2d Cir. 2000).

The R&R contains no error, let alone plain error. See 8 *Moore's Federal Practice* § 41.21[4] (3d ed. 2010) ("[A] dispensable nondiverse party may be dismissed to preserve the court's diversity jurisdiction."). Accordingly, the Court adopts the R&R without *de novo* review. Per the magistrate judge's directive, plaintiff shall file and serve an amended complaint omitting the nondiverse defendants by February 11, 2011.

SO ORDERED.

s/ Judge Frederic Block

FREDERIC BLOCK
Senior United States District Judge

Brooklyn, New York
February 1, 2011